

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Securities and Exchange Commission,

Case No. 3:82 CV 29

Plaintiff,

O R D E R

-vs-

JUDGE JACK ZOUHARY

James L. Douglas,

Defendant.

Pending before this Court is the Motion of Defendant Douglas to pay attorney fees from the sale of property owned, not by him, but by First New York (FNY). Plaintiff Securities and Exchange Commission (SEC) has responded with both a brief and supporting exhibits (Docs. 34–35).

This Court finds Plaintiff's response persuasive. Specifically, the recent claim that FNY owes Defendant over \$200,000 -- allegedly a loan -- is not adequately supported by either Defendant or Ms. Aberle, his accountant. More bluntly, this claim is simply not credible. The alleged loan is not reduced to writing, and the summary computations supporting such a loan were only revealed after the last hearing at this Court's request. This summary exhibit (Doc. 34, Ex. C) is not supported by credible evidence that a loan even exists.

The credibility of both Defendant Douglas and Aberle is, at best, suspect. Moreover, no one, including Aberle, has testified based on personal knowledge that the various payments to FNY over

several years constitute a loan as the law recognizes the term -- no payment terms, no interest rate, not even a handshake. In short verse, this theory of a loan is too little too late.

For all the reasons set forth in Plaintiff's response, this Court finds that Defendant has not satisfied his burden for court approval of payment of counsel fees from the FNY funds. Therefore, the Motion is denied, but without prejudice. As suggested by the SEC, should Defendant provide adequate support for such a payment from FNY (which is doubtful, frankly, given the accounting gymnastics displayed over four days of hearings), or from another legitimate source, this Court will reconsider.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

August 20, 2012